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Protecting asylum practitioners from emotional strain and secondary trauma: education, support and reform

ABSTRACT

Legal practitioners in the field of asylum law work daily with traumatised clients and hear traumatic stories. These include, for example, narratives of conflict, persecution, sexual violence, or the death of friends or loved ones. The role is emotionally demanding, and there is a risk that these professionals could be at risk of secondary trauma or burnout. This qualitative research consisted of 10 semi-structured interviews with asylum practitioners in England and the Republic of Ireland. It aimed to evaluate the preparedness of asylum practitioners in performing their roles, assessing training and education provided in secondary trauma, burnout and other emotional impacts involved in working in this role. It also aimed to assess structures of emotional support which are available for practitioners in their workplaces or the sector. A number of key themes emerged from the data – it was evident that practitioners can start and continue their roles without any education on the emotional demands of working in asylum law. While means of emotionally supporting practitioners are present in some workplaces, this cannot be said for all. Participants were also critical of that structures of support exist for other professionals working with asylum claimants, but they do not for them. Based on the findings of this research a series of recommendations will be made which are aimed at better safeguarding and supporting practitioners working in asylum law.

1. INTRODUCTION

Legal practitioners in the field of asylum law work with traumatised individuals¹ and hear their stories for claiming asylum on a daily basis. These stories can often provoke strong emotional responses because of their traumatic content.² People who seek asylum do so because they are

¹ Killian O'Rourke and Niall Crumlish 'A systematic review of treatments for post-traumatic stress disorder among refugees and asylum seekers', (2010) 198 *The Journal of Nervous and Mental Disease* 4, 237-251.

² Helen Baillot, Sharon Cowan, Vanessa E. Munro 'Second-hand emotion? Exploring the contagion and impact and distress in the asylum law context' (2013) 40 *Journal of Law and Society* 4, 509.

seeking protection from persecution,³ and consequently have often faced severe hardship. Asylum claimants may experience trauma or negative emotional impacts before they flee their country, during the journeys to the countries they are claiming asylum in, as well as within the countries they are applying for asylum. For example, they might have fled their home country because of war, organised violence, or because they had been persecuted due to their religion, sexuality, race, nationality, or political opinion.⁴ When travelling, they may have traumatic experiences, such as taking treacherous journeys.⁵ When in the country they are applying for asylum, they may experience social isolation, discrimination, separation from their families, poverty and uncertainty over whether they will be forced to return to their home countries.⁶

Working with traumatised people or hearing traumatic narratives has the potential to cause secondary trauma and burnout amongst legal professionals.⁷ In addition to the risk of secondary trauma and burnout, it should also be recognised that there is a high level of emotional labour involved in working with traumatised asylum claimants or hearing traumatic narratives⁸ which, as will be discussed, could be considered analogous with working in the medical professions or social services. This article will explore how we might educate prospective and current practitioners about the risk of secondary trauma or burnout and better support individuals working in this highly emotionally demanding role. This is important for two reasons: first, if legal professionals are emotionally affected from hearing traumatic narratives, from an ethical perspective, we have a duty of care to support them. Second, if legal professionals are experiencing secondary trauma or burnout within their roles, this could affect their ability to work with their clients, which is particularly dangerous given the high stakes involved for asylum claimants. Asylum claimants deserve our protection as a priority, however, we cannot

³ Article 1A(2) of the Refugee Convention lists reasons why an individual may be persecuted. It reads: ‘...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it’ (UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, 137).

⁴ *ibid.*

⁵ For example, see: Surinder Dhesi, Arshad Isakjee, Thom Davies, *An environmental health assessment of new migrant camp at Calais*, (University of Birmingham, 2015).

⁶ Helen McColl and Sonia Johnson ‘Characteristics and needs of asylum seekers and refugees with London community mental health teams’ (2006) 41 *Social Psychiatry and Psychiatric Epidemiology* 10, 789.

⁷ More of this will be discussed below.

⁸ Chalen Westaby ‘Feeling like a sponge’: the emotional labour produced by solicitors in their interactions with clients seeking asylum’ (2010) 17 *International Journal of the Legal Profession* 2, 164.

as a society fulfil our obligations to those in need of protection without protecting those who support or provide legal representation to them.

This paper is based on an empirical study which was split into two parts. The first part assessed the emotional impacts of working as an asylum lawyer where it was found that individuals reported burnout and other impacts associated with emotionally demanding work – such as inability to forget about traumatic cases.⁹ The second part of this study focused on the education and support available to individuals to cope with the emotionally demanding aspects of their work. The aims of this part of the research, which is the subject of this article, is to gain a view as to whether asylum practitioners are prepared for their roles when they initially start them, as well as to assess how they are supported within their roles, in their workplaces and the wider sector. What emerged was an understanding that practitioners can start their roles without any prior education on the emotional impacts of working in this area of law. Whereas training is available, it is voluntary and takes place on an ad hoc basis. It was also evident that while means of emotionally supporting practitioners exist within some workplaces, this cannot be said for most. Participants in the study were also critical that external structures of support, in their view, exist for other professionals who work with traumatised persons or hear traumatic narratives – such as in the social work or health professions. They questioned why legal practitioners are considered different from other professions when it comes to safeguarding them. It was also evident that practitioners are performing emotionally demanding work within a difficult environment where financial pressures on firms means that they may de-prioritise training in, for example, secondary trauma. In addition, these pressures mean that practitioners are having to take on more work, which means additional exposure to the trauma of other people.

This paper is structured into a number of parts. Following the explanation of the methodology, the following section is a discussion of well-being within the legal profession which contextualises many of the issues which follow within the article. The following three parts are

⁹ Neil Graffin “The Emotional Impacts of Working as an Asylum Lawyer” (2019) 38 *Refugee Survey Quarterly* 1.

related to the findings and analysis of the study. The first part will look at education; the second part, means of emotionally supporting practitioners; and the third part concerns structural issues relating to the sector. It has been structured in this way because while the different parts of this study are interconnected – they all concern helping preparing and supporting asylum practitioners to perform their role – they are distinct areas which require separate discussions and analysis on the findings of the research.

2. METHODOLOGY

In the qualitative study 10 participants were interviewed. Nine interviews took place in England, with one interview taking place in the Republic of Ireland.¹⁰ The interviews took place from March - June 2017. All interviewees worked as solicitors and were regulated by the Law Society of England and Wales, the Law Society of Ireland, or were non-solicitors regulated by the Office of the Immigration Commissioner (OISC). Snowballing techniques were used to select potential participants. An invitation to participate in the study was also sent through a mailing list consisting of academics, practitioners and other persons interested in migration law.

Purposive sampling was employed, enabling high quality qualitative data to be obtained.¹¹ The participants were chosen with three aims. First, they were selected from a range of professional backgrounds within the asylum law sector – seven were solicitors and three were non-solicitors. The second basis for choosing individuals was firm size and type – this was considered important because different professional environments, it was hypothesised, could provide different levels of support, or in-house training. Three individuals worked for a charity employing less than 10 people, one participant worked on a self-employed basis, two individuals worked as practitioners within a university setting, one person worked for a firm employing 11-25 people, one individual worked for an NGO employing less than 15 people, and another for a community legal advice centre which employed 11-25 people (in different

¹⁰ The interview in the Republic of Ireland took place because it was considered that many of the same issues would emerge from than would with the interviews in England. Although the Republic of Ireland has a different legal system, it operates under EU law which sets out minimum procedures for establishing refugee status.

¹¹ Martyn Denscombe, *The Good Research Guide for Small-Scale Social Research Projects* (3rd edition, Maidenhead, Open University Press, 2007) 42.

areas of practice). One individual worked for a firm with over 40 employees. Most of the practitioners had worked in different roles within the asylum sector. There were eight women and two men interviewed. The third basis for choosing participants was the duration of time that they had spent working in the sector – there was a good range of experience within the sample – from one year to 30 years, plus. Most of the interviews were conducted face to face, with two interviews over Skype. A semi-structured approach to interviewing was adopted to allow individuals to discuss freely their own thoughts on the issues, whilst maintaining an ability to compare the thoughts of the practitioners. There are limitations to this research, given the relatively small sample and the snowballing methods of recruitment. However, the data received from the interviewees was rich with insight, and important themes emerged, making this an important contribution to the research in this area.

Procedure and analysis

An inductive thematic analysis was undertaken as a means of finding and analysing themes within the data.¹² This approach was chosen due to its flexibility, which was considered important when conducting work in an interdisciplinary field, and its ability to provide rich data.¹³ Transcripts were coded and analysed using NVivo 10 which is qualitative data analysis software. A number of initial codes were identified and a number of further ‘nodes’ were added as the coding process developed and became more structured. Major and minor themes were identified by the author through observation of repetition across the data sources.¹⁴ In this article the repetition of themes or subthemes is denoted by the terms ‘many’, ‘some’, ‘most’, ‘all’ and ‘a number of’. These words do not relate to any specific number of observations, however, ‘many’ indicates a greater number than ‘some’ and ‘a number of’. These latter terms often correlate to be the same number. ‘Most’ can be given an ordinary meaning as indicating that nearly the majority of participants made an observation, but not all.

¹² Virginia Braun and Victoria Clarke “Using thematic analysis in psychology” (2006) 3 *Qualitative Research in Psychology* 79.

¹³ Alan Bryman, *Social Research Methods* (OUP, 5th edition, 2016), 584-586.

¹⁴ *Ibid.*

3. WELL-BEING IN THE ASYLUM PRACTITIONER COMMUNITY

In the 1980s and 1990s a growing awareness arose in Australia and the United States, documented in research, for example, by Kreiger,¹⁵ amongst others,¹⁶ about the poor mental health of legal professionals. For example, Kreiger and Sheldon state that, in respect of the United States, that there are various problems reported in the legal profession, such as depression, excessive commercialism and image-consciousness and lack of ethical and moral behaviour.¹⁷ They also attribute a decrease in mental well-being due to an increase in commercialism, as well as a loss of character and professionalism amongst lawyers.¹⁸ In a study by Kelk et al in Australia it was found that law students are particularly prone to depressive mental illness and that depression is widespread within the legal profession.¹⁹ In a study by James, again in Australia, it was found that reasons for poor well-being amongst practitioners included, management issues, high billing requirements, associated long hours at work, and the absence of quality mentoring, as well as a lack of control over workload and having a large degree of responsibility.²⁰ In the United Kingdom, research into wellbeing within the legal profession has been marked to a lesser extent, but it is becoming a widening area of exploration with similar issues being found.²¹ Collier describes how literature is raising questions about environmental factors within legal practice, workplace structures and cultures, the attributes of those who enter the legal profession, and aspects of legal education and training.²² In recognition of the issue, wellbeing is also becoming a bigger issue at the regulatory level. The Bar Standards Board (BSB), recognising the emotionally and

¹⁵ Lawrence S. Krieger 'What we're not telling law students and lawyers – that they really need to know', (1998-1999) 13 *Journal of Law and Health* 1, 1–48; Lawrence S. Krieger, 'Institutional Denial about the dark side of law school and fresh empirical evidence for constructively breaking the silence', (2002) 52 *Journal of Legal Education*, 112–129.

¹⁶ Patrick J. Schlitz 'On being happy, healthy, and an ethical member of an unhappy, unhealthy, and unethical Profession', (1999) 52 *Vanderbilt Law Review*, 4, 871–952; Martin EP. Seligman, Paul R. Verkuil and Terry H. Kang 'Why lawyers are unhappy' (2005) *Deakin Law Review* 10, 49.

¹⁷ Kennon M. Sheldon and Lawrence S. Krieger 'Does Legal Education have undermining effects on law students? Evaluating Changes in Motivation, Values, and Well-Being' (2004) 22 *Behavioral Sciences & the Law* 2, 261–286.

¹⁸ Kennon M. Sheldon and Lawrence Krieger 'Does Legal education have undermining effects on law students? Evaluating changes in motivation, values, and well-being' (2004) 22 *Behavioural Sciences and the Law* 2, 262.

¹⁹ Norm Kelk, Georgina Luscombe, Sharon Medlow, and Ian Hickie, *Courting the Blues* (Brain & Mind Research Institute, 2009).

²⁰ Colin James 'Lawyer dissatisfaction, emotional intelligence and clinical legal education' (2008) 18 *Legal Education Review*, 2 123–137.

²¹ For example, see: Richard Collier 'Love Law, Love Life: neoliberalism, wellbeing and gender in the legal profession – the case of the law school' (2004) 17 *Legal Ethics* 2, 203–230.

²² Richard Collier 'Wellbeing in the legal profession: reflections on recent developments (or, what do we talk about, when we talk about well-being)' (2016) 23 *International Journal of the Legal Profession* 1, 42.

psychologically challenging environments that barristers work in, have recently begun to promote well-being formally for those at the Bar. This has resulted in the development of a 'Well-being at the Bar' programme, which included a report on wellbeing,²³ as well as the development of online resources, and a number of different means of promoting wellbeing.²⁴ The Solicitor's Regulation Authority (SRA) also promote well-being through their website, including signposting support.²⁵

The aforementioned studies provide evidence that there are general issues across the legal profession concerning poor mental health. However, there is significant divergence within the sector and types of legal professionals encounter different issues depending on their roles. Michalak, for example, found that private lawyers have the lowest level of wellbeing.²⁶ Lawyers who work with traumatised individuals, such as asylum claimants, are at risk of secondary trauma.²⁷ In an Australian study, Surawski et al found that asylum lawyers experience moderate to high levels of stress in their work.²⁸ In the UK, Baillot et al found in their study of 25 legal representatives that some described their work as distressing and upsetting, amongst other negative emotions.²⁹ Similarly, Westaby found that the effects of having to perform emotional labour in consultations in asylum law can lead to burnout, as well as depression.³⁰ All participants in this study, in some way, self-reported being emotionally affected by asylum work. Some participants described not being able to 'move on' or forget some cases, and many described witnessing burnout in themselves or in others, or feeling stressed at some point or another.³¹

²³ Positive Group 'Well-being at the Bar: A Resilience Framework Assessment (RFA) by Positive' (2015, Positive).

²⁴ Further information can be found here: <<https://www.barcouncil.org.uk/supporting-the-bar/wellbeing-at-the-bar/>> accessed 13 February 2019

²⁵ Further information can be found here: <<https://www.sra.org.uk/solicitors/resources/your-health-your-career.page>> accessed 13 February 2019

²⁶ N. Surawski, A. Pedersen and L. Briskman "Resisting refugee policy: Stress and coping of refugee advocates" *The Australian Community Psychologist*, 20(2), 2008, 16-29.

²⁷ Yael Fischman, 'Secondary trauma in the legal professions, a clinical perspective' (2008) 18 *Torture* 2, 107-115.

²⁸ Nadya Surawski, Anne Pedersen and Linda Briskman 'Resisting refugee policy: Stress and coping of refugee advocates' (2008) 20 *The Australian Community Psychologist* 2, 16-29.

²⁹ Helen Baillot, Sharon Cowan, Vanessa E. Munro 'Second-hand emotion? Exploring the contagion and impact and distress in the asylum law context' (2013) 40 *Journal of Law and Society* 4, 525.

³⁰ Chalen Westaby 'Feeling like a sponge': the emotional labour produced by solicitors in their interactions with clients seeking asylum' (2010) 17 *International Journal of the Legal Profession* 2, 164.

³¹ Neil Graffin "The Emotional Impacts of Working as an Asylum Lawyer" (2019) 38 *Refugee Survey Quarterly* 1.

There are different medical classifications for describing the emotional impacts associated with working with traumatised persons and hearing their narratives. These include, for example, vicarious trauma, compassion fatigue, secondary traumatic stress, and burnout. In medicine these different classifications are understood as having different symptoms and sequelae.³² However, for the purposes of this article the ‘catch-all’ terms of secondary trauma and burnout will be used. Secondary trauma refers to negative psychological effects that result from ongoing involvement with traumatised individuals.³³ Burnout is described as ‘a syndrome of emotional exhaustion and cynicism that occurs frequently among individuals who do ‘people-work’ of some kind’.³⁴ It relates to ‘an indication of the employee’s growing inability to adequately manage their emotions when dealing with clients’.³⁵ In addition to these classifications, this article will use the phrase ‘emotional impacts’ – this is not a medical classification, but provides a description of feelings generated by the emotional demands of being an asylum practitioner. These feelings could lead to secondary trauma or burnout, or they may manifest in stress, sadness, or other forms of strain commensurate with working in an emotionally demanding role. The purpose here is not to medically investigate the claims made by practitioners, but to gain an understanding of how they feel they have been impacted by their work. Therefore, any discussions of these classifications have been self-reported by practitioners and are based on their own understandings.

Participants in this study discussed being affected by their work or described witnessing how some of their colleagues were emotionally impacted by the work that they do. A number of participants described how they had found their own motivation or that of their colleagues wane, the health of some of their colleagues deteriorate, or for some staff to leave their jobs within short spaces of time (e.g. a number of participants described the turnover of staff to be ‘high’ or ‘abnormally high’). Some participants discussed how they found it difficult to forget about cases because of their traumatic nature. One participant discussed taking cases ‘home’ and ‘feeling sad sometimes’. One of the participants described being emotionally affected

³² Charles R. Figley (ed.) *Compassion fatigue: Coping with secondary traumatic stress disorder in those who treat the traumatized*, (New York: Bnmner/Mazel, 1995), 178-208.

³³ Yael Fischman, ‘Secondary trauma in the legal professions, a clinical perspective’ (2008) 18 *Torture* 2, 108.

³⁴ Christina Maslach and Susan E. Jackson ‘The measurement of experienced burnout’ (1981) 2 *Journal of Occupational Behaviour* 4, 99.

³⁵ Dieter Zapf, Claudia Seifert, Barbara Schmutte, Heidrun Mertini, Melanie Holz, ‘Emotion work and job stressors and their effects on burnout’ (2001) 16 *Psychology and Health* 5, 527.

particularly by specific cases – citing in particular when women have been raped or been victims of FGM. Most of the participants were willing to speak about burnout quite freely – whether in relation to themselves or to their colleagues. A number discussed having experienced burnout themselves. Some of the participants discussed how burnout had affected their role, leading to demotivation. A number of participants discussed how a lot of people did not stay in their jobs long and that there was a high turnover of staff. This, it was suggested, was directly related to how difficult the role is. Participants had additional concerns relating to their roles – they spoke of heavy caseloads, the futility of working in a system where some clients have little chance of success, cuts to legal aid, as well as stigmatization of their client group, as providing additional challenges for them. These issues are discussed in further depth in the first part to this study, but form the context under which the rest of these issues presented in this article emerge.

4. EDUCATION ON THE EMOTIONAL IMPACTS OF WORKING AS AN ASYLUM PRACTITIONER

Neil Rees indicated as early as 1980 that many lawyers suffer burnout because they work closely with clients who have distressing problems, they often have to give bad news, and they have to communicate with individuals at an emotional level, but have no prior training in how to do this.³⁶ This is recognised elsewhere – Fischman, in his research into secondary trauma in the legal profession, states: ‘lawyers are not trained to acknowledge... work-related emotions, let alone to address the traumatic impact they may have upon them’.³⁷ Westaby argues that legal training encourages students how to dress and to conduct interviews, but that practitioners lack any formal training in being able to engage emotionally with an asylum client.³⁸ This section will look at the various professional routes to becoming an asylum practitioner and will assess what they offer in terms of education in the emotional impacts of working in this role. It will also consider whether education or training can be useful for practitioners and will assess how the participants felt about issues concerning education and training on these issues.

³⁶ Neil Rees, ‘Legal services: Coping with burnout’ *Legal Services Bulletin*, April 1980, 80 - 84.

³⁷ Yael Fischman, ‘Secondary trauma in the legal professions, a clinical perspective’ 18 *Torture* 2, 109.

³⁸ Chalen Westaby ‘Feeling like a sponge’: the emotional labour produced by solicitors in their interactions with clients seeking asylum’ (2010) 17 *International Journal of the Legal Profession* 2, 164.

4.1 *The professional routes to becoming a practitioner*

Section 84 of the Immigration and Asylum Act 1999 (IAA) provides that it is an offence for a person to provide immigration advice or services unless they are a ‘qualified person’. A qualified person is usually someone who is regulated by the Office of Immigration Services Commissioner (OISC) or a member or working under the supervision of a Designated Professional Body (DPB) – this includes, for example, the Solicitor’s Regulation Authority (SRA) or the Bar Standards Board (BSB).³⁹ Therefore, with regards to all routes in England and Wales, practitioners are required to be accredited or regulated to undertake publicly funded work in order to provide representation for asylum claimants. However, under the different routes a person may take before becoming qualified as an asylum practitioner it is clear that there is a lack of formal means of teaching about the potential health risks associated with working with traumatised clients or listening to traumatic narratives. This appears to be a feature of much of legal practice. This may be a product of a legal professional culture where the long historical taught notion of ‘thinking like a lawyer’ often abandons, as Elkins states “‘fuzzy’ soft thinking, and tender feelings, or for that matter, emotions generally”,⁴⁰ which may lead to a lack of concern about emotions or well-being generally.⁴¹

There are a number of different routes to becoming an asylum practitioner within England and Wales. To practise you are required to qualify as a solicitor or a barrister, be regulated by the Chartered Institute of Legal Executives (CILEx), or the Office of the Immigration Services Commissioner (OISC). To proceed through the barrister’s route candidates must complete a degree or qualification in law at higher education level. Candidates must also pass the Bar Course Aptitude Test (BCAT) to be considered for the Bar Professional Training Course (BPTC), which in turn they must pass. They also have to complete pupillage, which is a period of supervision for 12 months in Chambers or Approved Training Organisations.⁴² In order to

³⁹ Most accredited members are qualified persons, working in an OISC or SRA regulated organisation. However, this may also include (although is less common), being regulated by an EEA-equivalent of a DP and working under the supervision of a member of an EEA-equivalent.

⁴⁰ James R. Elkins ‘Thinking like a lawyer: second thoughts’ (1996) *Mercer Law Review* 47, 519 (parenthesis omitted).

⁴¹ Lawrence S. Krieger, ‘Institutional Denial about the dark side of law school and fresh empirical evidence for constructively breaking the silence’, (2002) 52 *Journal of Legal Education*, 112–129.

⁴² Middle Temple, ‘The Route to Qualification as a Barrister’

<<https://www.middletemple.org.uk/about-us/the-bar/the-route-to-qualification-as-a-barrister>> accessed 13 February 2019.

become a solicitor in the UK candidates traditionally have had to complete a degree or qualification in law at higher education level, a postgraduate professional course in legal practice (the Legal Practice Course (LPC)) and a training contract.⁴³ This is soon to change, as in 2017 the Solicitor's Regulation Authority (SRA) announced they were introducing the Solicitor's Qualifying Exam (SQE). This will commence, at the earliest, in September 2021. This will mean that to become qualified as a solicitor you will no longer require a law degree or the LPC, but you will need some type of undergraduate degree, unless you qualify via the CILEx route.⁴⁴ The exact details of what the SQE might look like, at the time of writing, have not been confirmed. However, it is proposed that it will consist of two parts. SQE1 will primarily test the application of legal knowledge, while SQE2 will test practical skills. The SRA proposal envisages 35 hours of assessment, including written tests, computer-based assessments and simulations, such as mock client interviews. There have been no suggestions that the SQE will assess candidates on their understanding of working with traumatised clients or hearing traumatic narratives, for this to necessitate universities and other providers seeking to prepare students for the SQE to educate students in these areas.

Becoming regulated by the Office of the Immigration Services Commissioner is generally the quickest way to be qualified as an asylum practitioner – you do not need to have a law degree, or any degree for that matter to do it.⁴⁵ There are three OISC levels which are divided according to competence. Advisers must demonstrate a sufficient level of skills and knowledge to show that they are able to provide good quality advice and services at each level.⁴⁶ Applicants demonstrate this through an application process, where they also need to submit a competency statement, and a formal written competence assessment.⁴⁷

⁴³ The Law Society, *Becoming a solicitor: start planning your future today* (2018, The Law Society).

⁴⁴ For further information see: <<https://www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page>>

⁴⁵ OISC *Guidance on Competence*

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/327534/guidance_on_competence_2012.pdf> accessed 13 February 2019.

⁴⁶ Ibid, accessed 13 February 2019.

⁴⁷ Office of the Immigration Services Commissioner (2016) 'Competence assessment process' <<https://www.gov.uk/government/publications/oisc-competence-assessment-process/the-competence-assessment-process>> accessed 13 February 2019.

OISC advisers become regulated through the OISC scheme. This scheme is built on three hierarchical levels which relate to the complexity of the work the practitioner will undertake. Practitioners will be regulated to a level depending on their experience and ability to meet competence requirements. Level 1 involves the least complex work and level 3 the most complex.⁴⁸ For each level, applicants are required to pass an OISC competence assessment and complete a competence statement.⁴⁹ There are sample assessment papers available through the OISC website.⁵⁰ It is clear from the papers that the examinations test knowledge of immigration and asylum law. While there are problem style questions which give an indication of the types of cases a practitioner will be dealing with, including on surveying the tests, examples where violence is present, there is no training provided on secondary trauma or the emotional impacts involved with this type of work. Solicitors, members of CILEx, and barristers are accredited through the Immigration and Asylum Accreditation (IAAS) scheme. To apply for accreditation at all levels, including at supervisor's level, applicants are required to complete and pass the relevant examination. For applicants there is a multiple choice test as well as a written examination. Applicants also have to submit an accreditation application.⁵¹ There are sample examination papers online for the IAAS accreditation scheme.⁵² These are similar in style to the OISC papers and there is no requirement for practitioners to be aware of secondary trauma or the emotional impacts of this type of work, although the papers again give an indication of the types of cases they will be working on. Practitioners may also qualify through the Chartered Institute of Legal Executives (CILEx). CILEx has a number of routes of entry, depending on the experience of the candidate. CILEx candidates work within a legal setting and study modules to achieve accreditation. CILEx offer modules, not unlike those of a contemporary law degree, but combine these with practitioner focused study. You do not need a law degree to qualifying as a Legal Executive, although there is a Graduate Fast-track diploma.⁵³

⁴⁸ OISC, (2012) *Guidance on Competence*

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/327534/guidance_on_competence_2012.pdf accessed 13 February 2019.

⁴⁹ Office of the Immigration Services Commissioner 'How to become a regulated immigration adviser' <https://www.gov.uk/government/publications/how-to-become-a-regulated-immigration-adviser/how-to-become-a-regulated-immigration-adviser#application-process> accessed 13 February 2019.

⁵⁰ For example, see: <https://www.gov.uk/government/publications/immigration-assessment-level-1-oisc> accessed 13 February 2019.

⁵¹ The Law Society, 'Immigration and asylum accreditation – how to apply' <https://www.lawsociety.org.uk/support-services/accreditation/immigration-asylum/immigration-and-asylum-accreditation-how-to-apply/> accessed 13 February 2019.

⁵² Sample papers can be found here: <https://www.clt.co.uk/qualifications/immigration-and-asylum-accreditation-scheme/sample-examination-papers.aspx> accessed 13 February 2019.

⁵³ CILEx 'Get into law & qualify with CILEx' <https://www.cilex.org.uk/study> accessed 13 February 2019.

As there are a variety of routes to becoming an asylum practitioner, some of which require a law degree, and others that do not, there is no central means through which efforts can be made to educate asylum practitioners on the emotional impacts of their work, at least at an academic level. While efforts are currently being made by some institutions at an undergraduate law degree level towards teaching students about techniques which may prove useful in their later careers, such as courses in managing stress,⁵⁴ holistic approaches to improving well-being,⁵⁵ mindfulness⁵⁶ the inclusion of emotional content⁵⁷ or emotional intelligences within legal curricula,⁵⁸ these are only relevant if an individual completes a law degree beforehand. Most of these efforts also take place outside of the United Kingdom – many of them in the United States. While it is beyond the scope of this article to advance the cause of embedding learning in these areas into the undergraduate degree, it is concerning that potential opportunities will be lost to educate prospective practitioners on the emotional elements of legal practice if they decide to skip the law degree when SQE is introduced.

Currently for both the barrister route and the solicitor route there are professional prerequisites to qualification – in England and Wales this is the BPTC for barristers and the LPC for solicitors. The BPTC tests critical thinking and reasoning – it does not test candidates on their ability to deal with traumatised clients or to listen to their narratives. According to the Bar Standards Board (BSB), if anything is embedded into the course, it will be on a small scale. However, the BSB, in conjunction with OISC and the SRA, recently has published a good practice guide addressing working with vulnerable persons, particularly immigration clients, and discusses, for example, traumatic experiences as a risk factors relating to the provision of

⁵⁴ Janet S. Lawrence, Melanie L. McGrath, Mark E. Oakley, Susan C. Sult 'Stress management training for law students: cognitive behavioural intervention' (1983) 1 *Behavioural Sciences & the Law* 4, 101-110.

⁵⁵ Katherine Lindsay, Dianne Kirby, Teresa Dlużewska, Sher Campbell 'Oh, the places you'll go! Newcastle Law School's partnership interventions for well-being in first year law' (2015) 8 *Journal of Law and Design* 2, 11-21.

⁵⁶ Leonard L. Riskin 'The contemplative lawyer: On the potential contributions of mindfulness meditation to law students, lawyers and their clients' (2002) 7 *Harvard Negotiation Law Review* 1, 1-66; Teresa K. Brostoff 'Meditation for Law Students: Mindfulness Practice as Experiential Learning' (2016) *Law and Psychology Review* 40, 157-168.

⁵⁷ Renata Grossi 'Understanding law and emotion' (2015) 7 *Emotion Review* 1, 55-60; Kathryn Abrams, and Hila Keren 'Who's afraid of law and the emotions?' (2009) 94 *Minnesota Law Review* 6, 1997-2074.

⁵⁸ For example, see: Marjorie A. Silver 'Emotional intelligence and legal education' (1999) 5 *Psychology, Public Policy and Law* 4, 1173-1203; Susan Douglas 'Incorporating emotional intelligence in legal education: A theoretical perspective' (2015) 9 *e-Journal of Business Education & Scholarship of Teaching* 2, 56-71.

immigration and asylum services.⁵⁹ This guide is designed for barristers to identify and manage client vulnerabilities. However, it focuses on the client, and is silent about the impact of working with vulnerable persons. When completing the LPC, candidates to the solicitor route have to demonstrate a number of learning outcomes, but there is no requirement to be able to demonstrate ability in dealing with traumatised clients or hearing their narratives.⁶⁰ Prospective solicitors also have to take a Professional Skills Course as part of their training contract. This focuses on financial and business skills, advocacy and communication skills, and client care and professional standards. It may depend on the provider whether training is provided in dealing with traumatised clients, but, surveying the learning outcomes, the Professional Skills Course does not have a stipulation that candidates are expected to undertake this sort of training.⁶¹

The various ethical codes of practice and standards of each of the regulatory bodies have competencies for each professional route – some of which contain requisite requirements relevant to working with traumatised persons. For example, the Bar Standards Handbook requires that ‘care is given to ensure that the interests of vulnerable clients are taken into account and their needs are met’ (oC14) and barristers have an ability to work with vulnerable clients (gC71). Upon becoming a solicitor, the Solicitor’s Regulation Authority (SRA) requires that those enrolled take account of their clients’ vulnerability in their dealings with them (IB(1.6)), that they are responsive to clients when dealing with complaints, especially those that are vulnerable (IB(1.22)), and that systems are in place in order to identify any client that is vulnerable (O(3.3.)). The OISC Code of Standards does not mention training in dealing with vulnerable clients, but mentions that individuals must have the knowledge, skills and competencies to meet their client’s needs (s. 18).⁶² While there is a requirement to take account of vulnerability, barristers and solicitors are not given, as a mandatory requirement, further instruction as to what this means or how to go about doing it. However, it might be argued that

⁵⁹ Bar Standards Board ‘Guidance for professionals working with people with immigration and asylum issues: how to help your client navigate the legal system’ (Bar Standards Board, 2017).

⁶⁰ Solicitor’s Regulation Authority, ‘Legal Practice Course Outcomes 2011’ (Solicitor’s Regulation Authority, 2011) 4-5.

⁶¹ Solicitor’s Regulation Authority, ‘Professional skills course information pack’

<<https://www.sra.org.uk/trainees/resources/professional-skills-course-information-pack.page>>

accessed 13 February 2019.

⁶² Office of Immigration Services Commissioner *The Code of Standards: The Commissioner’s Rules*

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/322737/code_of_standards.pdf>

accessed 13 February 2019.

contained within these codes is an implicit understanding that a practitioner is required to be able to cope emotionally when working with vulnerable clients, because in order to be able to be responsive to vulnerable persons, a lawyer needs to be able to cope with the emotional demands of their job. Education in secondary trauma could be one step towards helping asylum practitioners be emotionally aware of the requirements and demands of their role, which in turn can help them fulfil the requirements of their own codes of conduct.

While there is no education provided to practitioners before they commence their roles, voluntary training in vicarious/secondary trauma currently exists and is available to a wide range of professionals. The most commonly taken course, it appears, is run by Freedom from Torture. This training focuses, not solely on secondary trauma, but on stress, identifying factors that put one at danger from the emotional impacts of working with traumatised individuals, reflecting on personal experience, and formulating actions to reduce risk. It also includes training in the development of self-care strategies.⁶³ The training is aimed at providing tools to participants to help them to deal with the risks of working with individuals who have experienced trauma. Freedom from Torture state that this is their most popular course. It is available to a wide range of professionals – not just individuals working in the public sector.⁶⁴ Freedom from Torture are not the only organisation undertaking this type of training - the Home Office also indicated, in a discussion which took place during this research, that they ask their asylum caseworkers to undergo training in secondary trauma and this is provided in-house.⁶⁵

4.2 Findings

Participants were asked questions such as, ‘do you feel that your legal education provided you with the opportunity to learn about how to work with clients who may be vulnerable?’, ‘since

⁶³ Self-care strategies may include physical exercise, looking after one’s health (e.g. healthy food, sleep, reducing smoking or drinking), engaging in pleasurable activities, relaxation, planning or setting limits (taking care of problems, planning days, setting limits), social support, utilising professional contacts (e.g. talk to a psychologist or a priest), positive thinking, work (e.g. making a career, having money) or others (e.g. find love); these have been taken from: Anna Hansson, Pernilla Hillerås, Yvonne Forsell ‘What kind of self-care strategies do people report using and is there an association with well-being’ (2005) 72 *Social Indicators Research* 1, 136.

⁶⁵ This was found out through correspondence with the Home Office.

commencing your role, have you attended any training in dealing with vulnerable persons?’ and ‘did you find training in secondary trauma useful, and why?’ The questions had a number of aims. First, they were designed to ascertain what education was available for individuals prior to commencing their roles and to assess whether practitioners considered education on these issues to be important at the academic stage. Second, they sought to find out if practitioners had attended training in, for example, secondary trauma and to ascertain whether they found this useful.

The impression given by many of the participants was that a prospective asylum practitioner could pass an exam based on knowledge and skills relevant to their role, but with no training in managing their own or other’s complex emotions, work daily with traumatised individuals and hear daily traumatic stories. One participant summed this up pithily, stating ‘university really does not really prepare you for the real world’. Another participant described not having had any formal training or education on the issues of secondary trauma or burnout until she started the role she was in. One participant considered that the lack of education in these issues was detrimental to his professional role:

I think one can... get away with not having to do anything with the clients at all during the post-graduate... vocational training... So I think that there is a lack of social skills. I know that, for instance, many people complain that when doing medical studies they have just one semester, like, of psychology-related thing and my degree, when I was in my degree, we didn’t have any of that.

(Immigration and asylum case worker – 1 years’ experience)⁶⁶

This comment provides insight into a number of different issues relevant here – this practitioner felt that social skills are important in dealing with clients and that an understanding of psychology, impliedly relating to the issues of discussion, would be beneficial. He recognises

⁶⁶ Throughout this article the role and length of service of the practitioner is provided. This relates to their experience within immigration and asylum as opposed to the length of time they had been in their role at the time of the interviews.

that none of these are taught within the legal profession, at least in his experience. Other participants recognised this:

Well, I qualified and I entered the role as solicitor in 2001. And at the time human rights as a module in solicitor training took up I think one afternoon and approximately one hour of that was refugee law, so not much by way of preparation there.

(Immigration and asylum solicitor – 12 years' experience)

No, I didn't do anything of that sort prior to becoming a practitioner, so no... you just went into it.

(Immigration and asylum caseworker – 30 years' experience)

It was clear that for a number of participants, they 'just went into it' - there was not much preparation on an emotional level. This applied to both the solicitors and OISC advisors interviewed. It was evident from the study that some of the participants, including those with significant experience, had not had training on the emotional impacts of working in this area of law. Some participants explained that they did not know training to be available. One participant stated:

I'm trying not to be unfair to any of the organisations or professional bodies I've worked with but I can't recall any training on the issues that we're talking about, you know, the, sort of, emotional impact on the lawyer themselves of what they're doing. Now, I mean, maybe there has been, you know, it's been covered in a one-day course at some point but, really, I think it's fair say that there is little, if any, attention paid to that either by employers or by professional bodies because all the emphasis is on playing your legal role, you know, how to be a lawyer and, I mean, that has to be your priority. But I can't think that there's really been any specific training or attempt to equip people with the tools to deal with, sort of, the emotional pressures

of having to deal with asylum claims, which is why people develop their own mechanisms or leave because they're finding it too difficult.

(Asylum and tribunal advocate – 15 years' experience)

Upon commencing their roles a number of participants, both solicitors and OISC advisers, had attended courses on secondary trauma, or had arranged for others to do so, citing in particular training from Freedom from Torture.⁶⁷ Those who attended the training described it as being useful to them, for example, one participant describing it as a 'great course' that they try to get others to do. This included her managers which she described as being important 'to enable a 'top down' understanding of the issue'. One participant described how she felt that that teaching about 'protective factors' was useful, for example, taking some time out at the end of the day to relax. Another participant found while they were aware of their own vulnerability intuitively they still found the training useful.

I think it was useful. It basically just pointed out what I could probably feel intuitively because, look, another problem with immigration caseworkers or generally people who work with vulnerable clients is that they tend to underestimate their own vulnerability. They'd prefer to focus on all their clients... they prioritise other people's needs before their own.

(Immigration and asylum caseworker – 1 year experience)

Another participant found that the time to reflect about her work during this training was beneficial, and that overall she found the training to be valuable, as well as the teaching on coping strategies:

⁶⁷More information concerning this can be found here:
<https://www.freedomfromtorture.org/news-blogs/01_05_2015/self_care_and_vicarious_trauma_the_importance_of_training> accessed 13 February 2019.

[F]or the last few years, we've all attended a training session with Freedom from Torture about vicarious trauma. That's when I get an opportunity to explore my own feelings and step back from my day-to-day casework, look at how I feel, how I deal with things and how I react to the environment around me. I find that training quite useful. It's just one day in a year. We get materials and you can refer to that. It has been organised by the social work team in recognition of the fact that we all work with the same client group. The managers decided it's best for all of us to go, which is quite good... it really helps. I didn't know the value of the training until I went. When I went on it I realised how much I need to look at how I deal with clients on a day-to-day basis. They give you strategies on how to cope and you have group discussions and you talk about your feelings. I find that quite helpful.

(Immigration and asylum caseworker – 9 years' experience)

While some of the participants spoke favourably of the training, and had attended it, one participant noted the cost of training being prohibitive for their firm, describing how it was 'all about budgets' explaining that most of the training appeared to be in London, which was not always easy to get to. The issue with regards to funding might be a specific to the firm where this practitioner works, or it might be a reflection of the climate in which practitioners are in general working currently. Many of the practitioners mentioned, in discussions relating to different questions, how cuts to legal aid have significantly affected their roles, and the operation of the places that they work, putting additional pressures on them. It would not be unsurprising for a struggling firm to de-prioritise training on these issues where there are tightening financial constraints. It was notable that this same practitioner explained that in an 'ideal world' everyone would do mandatory training on secondary trauma.

Some of the participants were more critical of training or expressed that they did not see the value in it. For example, one participant noted that she did not feel the need for it, but found that others might. The impression given by this participant was that they felt that they could emotionally cope well with their work, however, she did indicate during the interview that she had seen others who were not able to cope with the emotional demands of the role.

I've set up training in support and supervision for people who wanted that or where it seemed useful, but I've never had it and neither have I ever felt the need for it.

(Immigration and asylum practitioner, 30 years' plus experience)

Other participants discussed time to be an issue for them. This is summed up in the comments of the participant below, who, although not directly discussing training, discusses how practitioners giving consideration to their own mental health is not something that they have 'time' for, because they feel that they should be helping those who need it the most. It might be perceived that 'time' in this context, might literally mean time, or it might be indicate a dismissiveness towards looking at one's own mental health, when asylum claimants are in a worse position.

Not to be too rude but to [think]... about your own mental health is not something that people in this line of work have time to do.

(Immigration and asylum solicitor, 24 years' experience).

4.3 Discussion

It was evident from the study that for a number of participants, they 'just went into it' - there was not much preparation on an emotional level. However, a question must be asked as to whether training in secondary trauma is actually useful for asylum practitioners. There appears (at least to this author's knowledge) to be no research on this issue in relation to lawyers. Research has been carried out in medical settings, as well as with social workers and aid workers, although the training evaluated appears to be on secondary trauma only. For example, in a study by Bober and Regehr on the effectiveness of training in secondary trauma in a medical setting in Ontario, including amongst social workers and psychotherapists and other medical professionals, it was found that participants generally believed in the usefulness of recommended coping strategies that are normally provided within training on secondary trauma, including leisure activities, self-care activities, and supervision. However, it was found

that there was no association between these coping strategies and traumatic stress scores. The research found that ‘the primary predictor of trauma scores is hours per week spent working with traumatised people... the solution seems more structural than individual. That is, organisations must determine ways of distributing workload in order to limit the traumatic exposure of any one worker’.⁶⁸ Additional research among aid workers concerning one-off training confirmed these findings.⁶⁹

If these findings above could be applied to lawyers as well, we might question the need for any training on emotions and focus on structural issues only. However, others argue that there is benefit in trauma training. In her research concerning teaching social work students, Maddy Cunningham argues that a theoretical framework for understanding client and student reactions to trauma may reduce the risk of vicarious trauma.⁷⁰ She proposes that ‘it may be helpful to educate students about trauma theory so that they can understand their traumatised clients’ dynamics as well as their own reactions’.⁷¹ Yassen also argues that training in trauma work provides a theoretical framework that ‘offers intellectual containment in the face of violence and the powerlessness/helplessness it can engender’.⁷² In addition to this, we should not consider stress or secondary trauma to be the only issues at stake here. Without education, a practitioner may not recognise the dangers that working with traumatised people and hearing their stories regularly could have on them (e.g. burnout), and the effect that it could have, or could be having, on their ability to perform their roles. Second, a practitioner might find it difficult relating to someone who is traumatised which could cause issues for that person if, for example, they are insensitive to their needs. Third, even if they recognise dangers, they might not know what to do about them. Fourth, it allows practitioners the chance to reflect on their own mental health and acknowledge that ‘thinking like a lawyer’, including its connotations of adopting a persona of unemotional rationality, is not incongruous with feeling emotionally affected by traumatic narratives. They can, for example, make their own interventions when

⁶⁸ Ted Bober and Cheryl Regehr ‘Strategies for reducing secondary or vicarious trauma: do they work?’ (2006) 6 *Brief Treatment and Crisis Intervention* 1, 1-9.

⁶⁹ Odelya Gertel Kraybill ‘Training not effective in mitigating secondary trauma stress’ (2015) *Expressive Therapies Dissertations* 18.

⁷⁰ Maddy Cunningham ‘Teaching social workers about trauma: reducing the risks of vicarious traumatisation in the classroom’ (2004) 40 *Journal of Social Work Education* 2, 308.

⁷¹ *ibid.*

⁷² Yassen ‘Preventing secondary traumatic stress disorder’, in Charles R. Figley (ed.), *Compassion fatigue: Coping with secondary traumatic stress disorder in those who treat the traumatized* (New York: Brunner/Mazel, 1995) 178-208.

they feel they have to – instead of feeling that emotional trauma is just part of a job they have to bear. Fifth, they might also be able to learn about self-care strategies, which, even if disputed by Bober and Regehr, could still prove useful to some individuals. Sixth, it is also ethical that practitioners should have an awareness of the level of emotionally demanding work. However, even set against these issues, the importance of Bober and Regehr's work should not be dismissed. Their focus on resolving the underlying structural causes of stress, instead of hoping that education, training, and self-care strategies will be a panacea in reducing stress is instrumental in providing understanding that this issue requires a multifaceted response. It is naïve to think that one-off training will be a protective guard against all the emotional impacts of asylum work. Training undoubtedly has its limits and a conclusion, without caveat, that it is a one-fix remedy could be dangerous if there structural problems that need addressing. Training cannot be a 'Band-Aid' for underlying structural issues, but it can provide one part of the armoury used against safeguarding individuals from the emotional impacts of working in asylum law.

While there are different routes to working as an asylum lawyer and not everyone will undertake a law degree, every practitioner, at least in England and Wales, requires to be accredited or regulated to undertake publically funded asylum work. It would seem that as part of the accreditation or regulation process you could have a mandatory requirement for training in secondary trauma and the emotional impacts of working in asylum law. This is important to have before practitioners commence their roles because, while there is value in on-the-job education in any profession, often it is periodic (and there are additional issues associated with firms outlaying the costs for training which will be discussed below). It is also ethical that practitioners should have an awareness of the level of emotionally demanding work required in this role before commencing it. This is also important because a number of participants discussed how they had witnessed asylum practitioners within their workplaces leave their roles within short spaces of time. While it is intuitively preferable for a course to be face to face, if this is considered too costly, an online e-learning course could be developed.

In relation to 'on-the-job' training it was evident from the discussions that while some participants viewed there to be value in training, others did not. Some of the participants

considered that ‘time’ or cost to be a factor in enabling practitioners to attend training, while others did not consider it a priority. For practitioners working in the sector it is impossible to make training in secondary trauma compulsory. It seems that the current strategy of encouraging practitioners to attend courses in secondary trauma as part of their professional development is a better means of meeting achieving the ends of making them aware of the emotional impacts of working in the role, rather than undergoing mandatory training. It might be argued that if costs are an issue for firms an e-learning module provide practitioners with the opportunity to learn about these issues (or greater funding could be provided, as will be discussed below).

5. MEANS OF SELF-CARE AND SUPPORT

Practitioners can seek to safeguard themselves from the demands of emotionally demanding work through self-care and also through seeking support by talking to others. In relation to self-care, for example, a person might improve their diet, exercise, learn a new skill, or take time out to destress.⁷³ Recently, there have also been a number of studies which look at how mindfulness meditation can be used by workers to reduce stress and increase balance and effectiveness – this has become a popular area of socio-legal study.⁷⁴ Seeking support through other people might include social support, informal conversations, debriefing sessions (whether formal or informal), or counselling. For example, in a study by Killian of clinicians dealing with individuals at risk of burnout and secondary trauma it was concluded that professionals should maintain social support, including having an active social network and an ability to debrief with supervisors, consultants and colleagues, particularly around difficult cases.⁷⁵ Smith et al have also concluded, in a study of therapists dealing with individuals who have experienced trauma, that a ‘supportive professional environment may make the difference between growth and burnout, which is a message for both therapists themselves as well as for

⁷³ NHS Choices, ‘Five steps to mental well-being’

<<https://www.nhs.uk/conditions/stress-anxiety-depression/improve-mental-wellbeing/>> accessed 31 July 2018.

⁷⁴ For example, see: Joel Orenstein, ‘Mindfulness and the law - a different approach to sustainable and effective lawyering’ (2014) 14 *QUT Law Review* 1, 106; Leonard L. Riskin ‘The Contemplative Lawyer: On the potential contributions of mindfulness meditation to law students, lawyers and their clients’, (2002) 7 *Harvard Negotiation Law Review* 1, 1-66; John Paul Minda, Jenna Cho, Emily G. Nielsen, and Mengxiao Zang ‘Mindfulness and legal practice: A preliminary study of the effects of mindfulness meditation and stress reduction in lawyers’ (2017) (unpublished).

⁷⁵ Kyle D. Killian, ‘Helping till it hurts? A multimethod study of compassion fatigue, burnout, and self-care in clinicians working with trauma survivors’ 14 *Traumatology* 2, 32-44.

the organizations in which they work'.⁷⁶ Emergency workers and healthcare professionals often use critical incident stress debriefings as a means to cope with the stress of their jobs. These briefings have been found to reduce incidence of PTSD and other serious mental effects.⁷⁷ It was considered that debriefing could have the potential of warding off secondary trauma, however, it was cautioned that this needed to be investigated further.⁷⁸

Participants in this study were asked a variety of questions aimed at understanding how they support themselves emotionally, including through individual means or seeking support by talking to others. These covered asking about formalised methods of support in the workplace, including counselling, or debriefing to other members of staff, or their managers. They were also asked about informal structures of support that they have from friends, family or colleagues. They were questioned about support services made available from external providers – such as LawCare, or through regulators like the SRA. The participants were asked questions, such as, 'Do you do anything to unwind?', 'do you feel that you have workplace support?', 'have you been offered support services either through work on from your regulator (e.g. the SRA), or are you aware of them?' or, 'have you the opportunity to de-brief to colleagues in work?'

5.1 Findings

Some, but not all, participants in this study discussed self-care strategies. For example, one participant described how colleagues had found yoga to be a beneficial way to unwind, whereas another participant described how she never missed an exercise class on a specific day, which meant she would always leave her job within normal working hours. Another participant described how she felt that everyone has a means of coping with things, whether it is 'doing exercise or going to a church'. One of the participants discussed having tried mindfulness, but she felt that she did not find any benefit from it: 'I don't get it. It works for some, but not for

⁷⁶ Annemarie, Smith, Wim Chr Kleijn, R. Wim Trijsburg, Giel Hutschemaekers 'How therapists cope with clients' traumatic experiences' (2007) 17 *Torture* 3, 2007, 214.

⁷⁷ Nirmala Vaithilingam, Smita Jain, and David Davies 'Helping the helpers: debriefing following an adverse incident' (2011) 10 *The Obstetrician and Gynaecologist* 4, 253.

⁷⁸ Kyle D. Killian 'Helping till it hurts? A multimethod study of compassion fatigue, burnout, and self-care in clinicians working with trauma survivors' (2014) 14 *Traumatology* 2, 42.

others'. One participant discussed how she had seen colleagues drink alcohol more to cope with stress - this has been long observed as a 'coping mechanism' associated with the legal profession.⁷⁹ None of the participants discussed that there were any specific programmes within their workplaces which promoted or sponsored well-being, although this might be a reflection that participants did not come from larger, more corporate, companies where these are more likely to be found.⁸⁰

Participants spent less time speaking about their own individual means of self-care than they did about speaking to others to help cope with the demands of their work. All participants in England and Wales noted that there is no formal method of providing emotional support through counselling for asylum practitioners. Although one practitioner in the Republic of Ireland spoke of a local psychologist being available in a previous role who offered one-to-one counselling sessions to staff, he said that was unsure how many individuals took it up. By way of an explanation he suggested that many within the legal profession may have a reluctance of seeking support. One participant described how they had sought private counselling outside of work. It was noted by a number of participants, both solicitors and OISC advisers, that the lack of opportunities to speak to professional staff was striking in comparison to what they had witnessed others receive in other professions. Two of the participants described how institutional support structures were in place for social workers who they worked with, but not practitioners. One stated:

Because they are social workers I think their training is probably more geared towards preparing them to deal with vulnerable people and they have an arrangement in place where they've got an external clinical psychologist that they see on a regular basis. I think it's every month that they sit down and talk to her about their caseload and how they're feeling. I think that's really helpful for them and it's something that would probably benefit me but as an immigration practitioner... It would probably be something useful but I've never approached my manager about it because you just tend to get on with it.

⁷⁹ G. A. H. Benjamin, E. J. Darling and B. Sales "The prevalence of depression, alcohol abuse, and cocaine abuse among United States lawyers" *International Journal of Law and Psychiatry*, 15, 1990, 233-246.

⁸⁰ For example, the top five law firms in the UK, Allen & Overy, Clifford Chance, Freshfields Bruckhaus Deringer, Linklaters and Slaughter and May all state to have a wellbeing strategy on their websites and in communications.

(Immigration and asylum caseworker – 9 years' experience)

Another described the benefit of working with social workers because they were able to benefit from the education that they had been provided:

At the organisation I was at least year, they had an immigration law team and a social work team, and the social work team they had this like therapeutic model with working with trauma survivors. It was quite useful for me, just chatting and stuff, some of things they said that kind of encouraged me to reflect on these things, which I hadn't really done before.

(Immigration and asylum solicitor – 8 years' experience)

Another participant described that she felt 'upset' because there were structures in place for social services staff, but not for solicitors. On the other hand, two participants noted that it would be unrealistic that their firms could be in a position to bear the costs of counselling – it was clear that for some participants the cuts to legal aid were putting strictures on their ability to provide a service, and counselling for staff would not be possible within this context. Some of the participants were aware of support from the charity LawCare. LawCare is a free service that provides support and information for legal practitioners feeling pressure because of work or study, or other mental health issues, *inter alia* – it is not a counselling service. LawCare advertises for those working under the auspices of the Legal Services Board (LSB). This does not include OISC advisers, however, in discussions with LawCare staff it was suggested that they would not refuse to speak to an OISC adviser.⁸¹ However, as they cover bodies regulated by the LSB, they do not currently advertise to OISC staff. Some of the solicitors that were interviewed were aware of LawCare. None had spoken to them, however, the number of calls to LawCare from legal professionals has been increasing – an 11% increase from 2016 to 2017.⁸²

⁸¹ Discussion on 24.08.2017.

⁸² Law Care, 'Callers to helpline at record high' available at: <https://www.lawcare.org.uk/news/callers-to-helpline-at-record-high> accessed 13 February 2019

Most participants noted that formal debriefing sessions did not exist for them within their workplace but they would talk to friends or peers in work. Notably, as is the case for many asylum practitioners, one of the participants worked alone and so would not be able to avail of support from colleagues, whereas another practitioner described that in an earlier time in her career she worked alone in an office in another city from her colleagues. This was because there happened to be a detention centre for asylum claimants nearby and so the office was placed in a position where they could provide a service to these clients. The participant described that during this time she often felt vulnerable because it could often be just her and her clients in her office. One individual noted a reluctance amongst members of her staff to discuss the emotional aspects of their work, but described how she felt it would be beneficial for them. This made clear the point that, even where workplace support exists, there is the possibility that individuals might not feel comfortable accessing it. This was observed by the participant below:

I can always go to a supervisor, but to be honest I haven't gone to one and said I'm feeling burnt out or effectively traumatised, so it's hard to say. I've definitely had workplaces where that didn't exist.

(Immigration and asylum practitioner – 8 years' experience)

Another interviewee explained that her workplace had developed formalised structures to enable practitioners to debrief. She described separately how meetings were weekly, but they also had an 'open-door' policy to allow staff to speak to supervisors, and this focused on not just cases, but how practitioners were feeling.

Yes. So each person has their named supervisor and each person then has a weekly meeting with that supervisor and I constantly have to stress to people that the point of that meeting is not just, what do I do on this case, what do I do on that case, it is, how do I feel, what's gone well this week, what hasn't gone well this week?

(Immigration and asylum solicitor – 12 years' experience)

This participant was a manager in work and implied that she felt that these meetings were useful. However, while no other practitioners indicated that they felt that these type of meetings would not be useful, there did not seem to be any indication that they felt that this was something they felt a need for. Whereas, on the other hand, participants were clearer that they did turn to friends or family members for support. For example, one participant stated '...to be quite honest a lot of it has been with friends that I've made in the particular job'. Another participant recognised that because his work was client-facing he had an obligation to remain unemotional in front of clients, but could speak to his partner, although was concerned about the effect that this had on her:

I can't burst into tears in front of a client, or I can't just tell someone off if someone is just impolite... so obviously I usually just carry that back home where I probably feel safe to be vulnerable which maybe is not the best thing from my partner's perspective because she has to deal with it and she probably doesn't like it.

(Immigration and asylum practitioner – 1 years' experience)

The same practitioner also explained, when questioned about whether there were structures of support within the workplace or on an institutional level, that he relied on his friends in work:

I don't know about any institutional policy...I just have a couple of colleagues whom I think I can call friends with whom I can also discuss certain things out of the office.... Yes, so it's just like an informal support network. Those people are much more experienced than I am so they also probably know better how to cope with certain kinds of things.

(Immigration and asylum practitioner – 1 years' experience)

The sentiment that friends and family could provide support was echoed by a number of practitioners – in this case, interestingly, this participant felt that having good support meant that she has never needed any additional (professional) support:

I've never suffered what I would call vicarious trauma, and I've never, I felt, needed to have any particular support. I have a good personal network of friends and family for all sorts of things, so they would be there in any event.

(Immigration and asylum advocate – 12 years' experience)

One participant interestingly discussed how she felt she could rely on other practitioners within the profession. This general sentiment was recognised by two participants in this study which suggests that, even where competition exists between firms, some practitioners in the sector rely on each other for support.

I'm lucky that I've made some good friends in this line of work and actually immigration lawyers are a bit of a family.

(Immigration and asylum solicitor – 8 years' experience)

It was recognised that workplace support was lacking, a number of the participants discussed the formal supervision within their workplaces. This takes place for immigration and asylum practitioners under the accreditation and regulatory schemes.⁸³ They described how it was only aimed at teaching a practitioner about the formal side of their role – not helping them cope with the emotional demands of it. This included, for example, procedures in submitting claims or the substantive nature of cases, as well as the general workplace procedures (booking for interpreters etc.). For example, one participant stated how supervision only covered how to

⁸³ The Law Society, *Immigration and Asylum Accreditation*, (The Law Society, 2015); OISC, *Guidance Note on Supervision* (OISC, 2016);

work on the ‘nuts and bolts’ of cases, not how to cope with the emotional demands of the role. Another participant stated:

There is supposed to be, and usually is, a system of supervision and in that supervision you would be dealing with not just the, sort of, the nitty-gritty of individual cases but things like caseload, but not really dealing with the, sort of, emotional impact on you. The sorts of things that we’ve been discussing, I can’t recall, would ever really have arisen in a, sort of, supervision setting because it’s more about you doing the legal job that you’re meant to do and how do you ensure that a person is competent to do that and, from an organisational point of view, is not being asked to work above the level that they’re able to work at, or how do they move, say, to deal with appeals rather than dealing with initial applications? That’s what the supervision process is more concerned with rather than the impact on the individual.

(Tribunal advocate – 15 years’ experience)

5.2 Discussion

It was possibly surprising that not many participants discussed individual means of destressing, but this may have reflected the small sample of practitioners involved in the study. Of those who did discuss individual means, exercise seemed to be mentioned most often. With the exception of one participant, no one suggested counselling had ever been made available to them through their workplaces, although a number had suggested that they knew about LawCare and what it has to offer as an organisation.

As noted above, a number of practitioners noted that they felt it worth discussing that legal professionals were treated differently to other professionals who work with traumatised persons or hear their narratives. An analogy may be drawn from the counselling profession where all members of the British Association for Counselling and Psychotherapy (BACP) agree to uphold the Ethical Framework for the Counselling Professions⁸⁴ which requires clinical supervision for those who regularly give or receiving emotionally challenging communications, or engaging in relationally complex and challenging roles. Paragraphs 60-73

⁸⁴ BACP, Ethical Framework for the Counselling Professions (BACP, 2018).

of this document sets out details of what constitutes good practice of supervision. Members of the BACP are encouraged to avail of ‘ongoing opportunities to reflect in depth about all aspects of their practice in order to work as effectively, safely and ethically as possible’.⁸⁵ BACP also stipulate in their Ethical Framework that all counsellors take responsibility for, under 91(b): ‘monitoring and maintaining our own psychological and physical health, particularly that we are sufficiently resilient and resourceful to undertake our work in ways that satisfy professional standards’; and 91(c): ‘seeking professional support and services as the need arises’.⁸⁶

There is no comparable requirement for regular clinical supervision for asylum (or other legal) practitioners, and it seems to defy logic that a social worker may receive counselling when he or she works with asylum claimants, whereas a practitioner does not. It is desirable that counselling services should be made available to practitioners, should they need to avail of them. However, the issue with the asylum law sector is that practitioners work in a variety of roles – whether as OISC caseworkers, chartered executives, barristers, or solicitors. They may also work as sole traders or within larger firms. Therefore, the potential of getting all workplaces to agree to formal supervision, within a clinical setting, or for sole traders to take it upon themselves, would require substantial advocacy and change. For firms, they need to see the value in such an endeavour, and would need to be able to commit resources to the endeavour. This seems unlikely, particularly since the cuts to legal aid following the Legal Aid and Sentencing of Offenders Act 2012. Further public funding would need to be obtained for these purposes – this will be discussed further in the section entitled ‘Structural Issues of Concern’.

In terms of formal methods of debriefing, it was clear that this did not exist in most workplaces. It was also evident that supervision within the workplace did not cover how people are coping with the emotional demands of asylum work. While formal debriefing could be useful a cautionary note should be made - debriefing to colleagues or managers may be difficult because of institutional structures or cultures, as Baillot et al note (quoting Martin et al) ‘by relying on peer groups to provide emotional support, there is a risk of stagnating received conventions,

⁸⁵ *ibid*, para 60.

⁸⁶ *Ibid*, para 91.

such that “staff learn to pay attention to (stress) and talk about it in the “organisational” way””.⁸⁷ In addition, Raphael et al have stressed how informal talks can be as useful as psychological debriefings,⁸⁸ so this may mean that formal measures are not needed anyway. This has been supported by research by Harris et al who state that, on a study of PTSD amongst firefighters, that ‘while there is evidence that emergency responders for the most part appreciate and are pleased with debriefings, the same effect can be achieved by both informal and formal measures such as pre-incident and post-incident review and social support’.⁸⁹ With consideration to the argument of Baillot et al, it may be envisaged that in some circumstances, because of hierarchical workplace structures, it can be more difficult to debrief with a supervisor. This was not an issue fully explored by this research, but one participant did acknowledge that one of the things that they took from the Freedom from Torture training on secondary trauma was that individuals should preferably not debrief with a supervisor because they might feel that they are being judged. A possible means of overcoming this could be to encourage peer to peer support with colleagues, but in a structured way. For example, by creating time within the working week, and quiet spaces, for confidential discussions. This should always be a voluntary undertaking – practitioners should not feel compelled to discuss issues they may feel uncomfortable with within the working environment.

6. STRUCTURAL ISSUES OF CONCERN

The push by companies towards individual responsibility of caring for the self does not come without its critics. In William Davies’s book ‘The Happiness Industry’, amongst a number of arguments presented by the author, criticises the current push by companies towards measuring happiness and promoting individual well-being, which includes, for example, mindfulness techniques. Referring to changes in political culture, including the rise of individualism within society, Davies argues that it is telling that we teach resilience and mindfulness, ‘silent relationships to the self, rather than the vocal relationships to each other’.⁹⁰ He continues:

⁸⁷ Baillot et al, n 537-538.

⁸⁸ B. Raphael, L. Meldrum and A. McFarlane ‘Does debriefing after psychological trauma work?’ (1995) 310 *British Medical Journal*, 1479-1480.

⁸⁹ M.B. Harris, M. Baloglu, and J.R. Stacks, Mental health of trauma-exposed firefighters and critical incident stress debriefing (2002) 7 *Journal of Loss & Trauma* 3, 223-238.

⁹⁰ William Davies, ‘The happiness industry: How the government and big business sold us well-being’ (Verso Books (eBook edition), 2015) 219.

‘stress can be viewed as a medical problem, or it can be viewed as a political problem. Those that have studied it in its broader social context are well aware that it arises when individuals have lost control over their working lives, which ought to throw the policy spotlight on precarious work and autarchic management, not on physical bodies or medical therapies’.⁹¹ Richard Collier also describes how well-being in the legal profession appears, rather as a solely positive tool to allow for employees to care for their own mental health, ‘as an organisational structure, a ‘catch-all’ concept deployed within an increasingly competitive marketplace to maximise productivity, manage risk... and help create wealth and competitive advantage’.⁹² Collier argues that to understand poor mental health within the profession we need to consider the demands placed upon legal practitioners. He suggests we look to the ‘inner mind’ of those who inhabit the profession, considering such things as the consequences of ‘social, economic and, demographic and cultural shifts on aspirations and expectations’.⁹³ For example, he points to the global financial crisis and austerity as having a profound impact on job security and mental health on legal professionals.⁹⁴

In this study, participants routinely discussed high caseloads, legal aid cuts, and discussions about the financial viability of their firms. These became recurring themes of discussion. For example, one participant described the asylum legal sector as ‘overwhelmed’, whereas another participant described how practitioners needed to have larger caseloads to make firms financially viable because of the ‘extreme restrictions on legal aid’. Another participant stated ‘we just didn’t have the capacity to take all those people... I think our caseload was just not manageable, was unsustainable’. A number of participants spoke directly about cuts to legal aid affecting their work. These cuts clearly had an impact on practitioners as they were required to take on additional cases, or were working in increasingly financially precarious environments. These structural issues were discussed by a lot of the participants to the study, and appeared as important to their ability to cope with the emotional demands of their work than other issues. This gave the impression that whilst there were heavy emotional demands of working with traumatised people or hearing traumatic narratives, there were wider issues

⁹¹ *ibid.*

⁹² Richard Collier ‘Wellbeing in the legal profession: reflections on recent developments (or, what do we talk about, when we talk about wellbeing?)’ (2016) 23 *International Journal of the Legal Profession* 1, 51-52.

⁹³ *ibid.*, 53.

⁹⁴ *ibid.*

within the asylum law sector which were directly impacting on individuals, causing stress. If the research by Bober and Regehr's discussed above is true within a legal setting (and there is no reason why it would not be), then limiting the exposure of practitioners to traumatised clients and traumatic narratives could be a much more beneficial way in safeguarding professionals, at least from secondary trauma. It may be seen as a 'cop-out' for legal firms to promote well-being programmes, while encouraging their staff to work long hours or have high billing requirements or caseloads. It should therefore be stressed that if a practitioner is struggling with burnout or other negative emotional consequences associated from doing asylum work, while self-care strategies are useful, it may be more beneficial to lessen their workload and their exposure to traumatised people of traumatic narratives, than to place the burden on to them to take additional tasks on, like committing themselves to exercise programmes or mindfulness classes.

As a result of cuts of legal aid, firms, Citizen's Advice and law centres have been closing down in large numbers with clients facing lengthy delays. Firms report to having to turn clients away.⁹⁵ In this climate, it is difficult to see how firms might change their practices – unless, for example, as one participant to this study pointed out, it has a pay off in the retention of staff and consequently departmental accrurement of knowledge and experience in a complex area of law. Therefore, if we are to take these issues seriously we initially need to see better rates of pay under the legal aid scheme. We also need to see firms commit to making these changes. This could include considering providing free access to counselling services to staff where they are required, as well as investing in training and education on these types of issues. These changes are not just important for staff members (and the firms themselves) but have an important role in ensuring that clients are better served and protected. A practitioner who cannot cope with the emotional demands of their work may not provide the best quality of legal representation to their clients – for asylum claimants this could be potentially very dangerous.

⁹⁵ C. Baksi "Civil legal aid: access denied" *The Law Society Gazette*, 7 April, 2014.

7. CONCLUSION

Asylum practitioners deal with emotionally demanding work on a daily basis. This can, as this study found, impact on their ability to perform their roles or the duration they stay in their jobs. Practitioners usually begin their roles without education on the emotional impacts of working in this area, the dangers of secondary trauma, or other forms of emotional stress or strain. Academic or professional legal education usually does not focus on developing skills in working with traumatised individuals. Additional education on secondary trauma for established practitioners is only voluntary within the sector, and comes at a cost which may be prohibitive for some firms. It is with this in mind that it was argued in this paper that training on the emotional impacts of asylum law should become part of the accreditation stage for practice. This could take the form of face to face classes or an e-learning module. Training on these issues should also be promoted within workplaces for those who already are in practice.

This study also found that asylum practitioners are usually not offered chances to debrief to professional counselling staff, as other professionals are within the medical sector or social services. Within the workplace, structures of support, whether formal or informal, may be there, but can vary. Other support structures, in the form of peer, social and supervisory support, should also be encouraged. Free support services, for example, LawCare, should also be extended and advertised to all immigration and asylum caseworkers, including those not operating under the auspices of the Legal Services Board. Nevertheless, training and workplace support will not solve all issues – if we want to limit the impacts of stress and strain on practitioners, we may need to look more widely at how the sector and workplaces are placing additional demands on them by creating environments where practitioners are taking on heavy caseloads of emotionally demanding work. All of these means of supporting practitioners will not safeguard them from working with asylum claimants completely – the role will continue to be very emotionally demanding because of the often traumatic experiences many asylum claimants have had when they are devoid of protection within their home countries and have to seek refuge elsewhere. Nevertheless, these changes could help practitioners be better educated of the dangers associated with working in this area, and support them better as legal professionals.

This study focused on asylum law practice within the context of England and Wales, but this paper has a wider relevance to non-lawyers who work with asylum claimants and hear their narratives. It also has international significance – worldwide, asylum practitioners listen to the narratives of their clients on why they are claiming refuge and these are often harrowing and distressing stories. In addition, this work has relevance to other lawyers who work regularly with traumatised individuals. For example, criminal or family solicitors working with people who have experienced violence or other serious crimes or their families where there are similar failings in educating and supporting these professionals. This is an area where further work needs to be undertaken.